IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 208 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RATILAL BHIKHABHAI DODIA - Appellant(s)
Versus
STATE OF GUJARAT - Defendant(s)

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Appearance :
MR NILESH A PANDYA for Appellant(s) : 1,
MR ND GOHIL, AGP for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 15/11/2006

ORAL JUDGMENT

1. Heard the learned counsel for the parties. The plaintiff, a work charge employee was asked to retire in the year 1972 on completion of 58 years of age. The department, vide their letter

dated 26.4.74 asked the plaintiff to join the services. The plaintiff did not join the services on the pretext that only two months were left, therefore, he would not join the services. Thereafter, the plaintiff made certain representation to the government and last of his representation was rejected on 30th September, 1978. On 16.7.80, the plaintiff filed the present suit for a declaration that his retirement was illegal, for recovery of the salary to which he would have been entitled in absence of order of retirement and other benefits flowing from the service conditions. The defendant appeared before the Court and contested the suit on almost every possible ground. The trial court decreed the suit, but on an appeal by the respondent, the said decree was set aside, therefore, the plaintiff is before this Court.

2. The appeal has been admitted for hearing the parties on the following substantial question of law:-

"Whether the suit is covered by the

provisions of the Limitation Act?”

3. As the question is too wide and covers each and every provision of the Limitation Act, with the consent of the parties, I redraft the question as under:-

> “Whether the suit is covered by provisions of Article-113 of the Limitation Act and whether the suit of the plaintiff is not barred by limitation?”

4. Shri Nilesh A. Pandya, learned counsel for the appellant submits that the suit filed on 16.7.80 could not be dismissed as barred by limitation in view of the fact that last of the plaintiff's representation was rejected on 30th August, 1978. According to him, Article-113 of the Limitation Act, 1963 provides that where limitation for filing a suit is not otherwise provided for in any of the Articles, then, the limitation would be three years from the date of accrual of the cause of action. According to him, the cause of action would accrue in favour

of the plaintiff on the date of the last rejection and the suit could not be dismissed on the ground that it was barred by limitation.

5. Shri N.D. Gohil, learned AGP for the State, on the other side, submits that Article-113, if is appreciated in its true perspective, it shall clearly appear that the cause of action would accrue on happening of an event. The cause of action in the present case, according to him, accrued in favour of the plaintiff on the date of his illegal retirement or in any case, on 26.4.74 when the respondent issued notice to the plaintiff to join the services. He submits that the suit is barred by limitation.

6. Article-113 of the Indian Limitation Act provides that the suit for which no period of limitation is provided elsewhere in the Schedule, the limitation would be three years from the date right to sue accrues. In the present case, for purposes of salary, right to sue would accrue on completion of each month and for the last month's salary, had the appellant continued in the services, right to salary

would have accrued at the end of June, 1974. If the salary is to be recovered within a period of three years, from the date when the right to receive the salary accrues, then, this suit on 16.7.80 would not be maintainable.

7. So far as the rejection of the representation is concerned, in the opinion of this Court, by filing representation, which was unnecessary and not required under any law, a plaintiff cannot gain limitation each and every time. In the present matter, the law did not require the plaintiff to make representation. If the State Government had rejected the representation, then, simple rejection of the representation or denial of the claim of the plaintiff would not provide a fresh ground, specially when the limitation had already expired in the year 1977.
8. In my considered opinion, present suit was rightly dismissed by the appellate court as barred by limitation. The appeal deserves to and is accordingly dismissed. Interim relief, if any, is vacated. No costs.
9. Decree be framed accordingly.

[R.S. GARG, J.]

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